



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

October 5, 2004

S. 2145 **SPY BLOCK Act**

*As ordered reported by the Senate Committee on Commerce, Science,
and Transportation on September 22, 2004*

SUMMARY

S. 2145 would prohibit the use of computer software (known as spyware) to collect personal information and to monitor the behavior of computer users without permission. Enacting S. 2145 could affect direct spending and receipts because those individuals who violate the provisions under this legislation could be subject to civil and criminal penalties. Based on information provided by the Federal Trade Commission (FTC), CBO estimates that implementing S. 2145 would not have a significant effect on revenues, direct spending, or spending subject to appropriation.

S. 2145 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs for state, local, and tribal governments would be minimal and would not exceed the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

The bill would impose mandates on the private sector. CBO's analysis of the cost of those mandates will be provided later in a separate report.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Enacting S. 2145 could increase federal direct spending and revenues from the criminal and civil penalties assessed for violations under the bill's provisions, but CBO estimates that any new collections and subsequent spending would be less than \$500,000 a year.

Implementing the bill also could increase spending by the FTC and other federal agencies for law enforcement, subject to the availability of appropriated funds. However, due to the

relatively small number of cases likely to be involved, CBO expects that any such increase would be insignificant.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

Section 8 would require the Attorney General of a state who files a civil suit against a person engaging in activities prohibited by this bill to notify the FTC and would grant the FTC the right to intervene in such a suit. This requirement on the officers of a state constitutes a mandate as defined in UMRA.

Section 9(b) would preempt state laws that prohibit the use of certain types of computer software and would establish penalties for violators. Section 1030A would prohibit states from creating civil penalties that specifically reference the provisions of this bill. Those preemptions and prohibitions are mandates as defined in UMRA but would specifically preserve state authority to pursue fraud, trespass, contract, and tort cases under state law. They also would not prohibit states from enacting similar criminal and civil statutes.

CBO estimates that any costs to state, local, or tribal governments would be insignificant and would fall significantly below the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

The bill would impose mandates on the private sector. CBO's analysis of the cost of those mandates will be provided later in a separate report.

PREVIOUS CBO ESTIMATES

On July 8, 2004, CBO transmitted a cost estimate for H.R. 2929, the Securely Protect Yourself Against Cyber Trespass Act, as ordered reported by the House Committee on Energy and Commerce on June 24, 2004. In addition, on September 28, 2004, CBO transmitted a cost estimate for H.R. 4661, the Internet Spyware (I-SPY) Prevention Act of 2004, as ordered reported by the House Committee on the Judiciary on September 8, 2004. All three pieces of legislation are similar, although H.R. 4661 would authorize the appropriation of funds to enforce its provisions. The intergovernmental mandates in S. 2145 also were contained in H.R. 2929 and H.R. 4661.

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